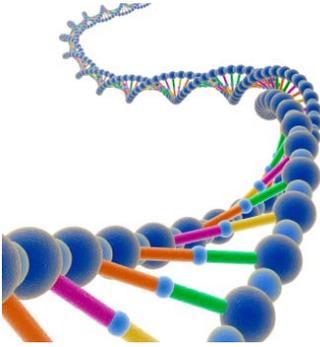


The Genetic Information Nondiscrimination Act of 2008: “GINA”



The Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. § 2000ff, a Federal anti-discrimination statute, took effect on November 21, 2009. The EEOC’s regulations implementing Title II of GINA, which prohibits discrimination in employment based on genetic information, became effective on January 10, 2011. *See* 29 C.F.R. Part 1635. This document does not cover every aspect of GINA, but instead seeks to provide an overview of the law so that managers and employees are generally informed about its significance in the workplace.

In general, the statute defines “genetic information” as information about:

- a disease or disorder in family members (family history);
- an individual’s genetic tests;
- genetic tests of an individual’s family members;
- genetic tests of any fetus of an individual or family member; or
- any request for or receipt of genetic services, or any participation in genetic testing or genetic counseling by an individual or family member.¹

An employer may never use genetic information to make an employment decision because genetic information doesn’t tell the employer anything about an individual’s current ability to work. Accordingly, GINA prohibits Federal Agencies from using or relying on genetic information related to employees or applicants for any decision regarding any aspect of employment, including but not limited to: hiring, promotion, demotion, seniority, discipline, termination, compensation and any decision regarding terms, conditions or privileges of employment. As is true for all Federal anti-discrimination statutes, GINA also prohibits harassment of an employee or applicant because of his or her genetic information, as well as retaliation against an employee or applicant for filing a GINA-based charge of discrimination, participating in a genetic information discrimination proceeding (such as an investigation or lawsuit), or otherwise opposing discrimination made unlawful by GINA.

For example, an employer cannot reassign an employee, based on the employee’s family medical history of heart disease, from a job the employer believes would be too stressful and might eventually lead to heart-related problems for the employee. In short, any employment action based on or taken in reliance on genetic information, even an action that might be intended to benefit the employee, will violate GINA.

¹ 29 C.F.R. §1635.3

In addition to its prohibition of discrimination, GINA also prohibits employers from intentionally requesting or obtaining genetic information from employees or applicants. There are a few, very narrow exceptions to this prohibition; those most relevant to DOL employment are presented below:

- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member's illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Family medical history may be acquired as part of the certification process for FMLA leave, where an employee is asking for leave to care for a family member with a serious health condition.
- Genetic information may be acquired through commercially and publicly available documents like newspapers, as long as the employer is not searching those sources with the intent of finding genetic information or accessing sources from which they are likely to acquire genetic information (e.g., websites and on-line discussion groups that focus on issues such as genetic testing of individuals and genetic discrimination).
- Genetic information may be acquired through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.²

Additionally, in general, genetic information obtained based on narrowly-drawn requests for medical information in connection with reasonable accommodation do not violate GINA.³ Managers must exercise great care upon receiving genetic information. Care must be taken to maintain the confidentiality of such information, as it is unlawful for a covered employer to disclose genetic information about employees or applicants. Any questions regarding GINA's coverage or its application to any specific fact situation should be addressed to the Department of Labor's Civil Rights Center.

² 29 C.F.R. §1635.8 (b)

³ It is recommended that the following language be included in any agency correspondence that seeks or could generate receipt of an employee's or applicant's medical information:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of individuals or their family members. To comply with this law, we are asking you not to provide any genetic information when responding to this request for medical information. "Genetic information" that should not be disclosed pursuant to GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, genetic information of a fetus carried by an individual or an individual's family member, and genetic information of an embryo lawfully held by an individual or family member receiving assistive reproductive services. 29 C.F.R. §1635.8 (b)(1)(i)(B)